IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE POST CONFIRMATION TRUST	**:**	
FOR FLEMING COMPANIES, INC.	**:**	
Plaintiff,	**:**	
	:	**CIVIL ACTION NO. 06-CV-1118**
v.	**:**	
	:	
HAROLD FRIEDLAND	**:**	
Defendant.	**:**	

MEMORANDUM AND ORDER

Tucker, J. **September 27, 2006**

Presently before the Court are Defendant's Motion for Judgment on the Pleadings (Doc. 8), and Plaintiff's Response in Opposition (Doc. 9). For the reasons set forth below, this Court will grant Defendant's motion and enter judgment in favor of Defendant and against Plaintiff in this matter.

BACKGROUND

Plaintiff, the Post Confirmation Trust for Fleming Companies, Inc. ("PCT"), is the Chapter 11 bankruptcy trust for Fleming Companies/Fleming Foods East, Inc. ("Fleming"). Fleming Companies and its predecessor Fleming Foods East, Inc. supplied food products wholesale and leased and subleased supermarket locations. (Compl. ¶¶ 7-8.) Defendant, Harold Friedland, is the guarantor of specified debts owed by Renco Supermarket ("Renco") to Fleming. Plaintiff brings the instant action against Defendant for Renco's breach of a sublease agreement executed between Fleming and Renco Supermarket.

On November 16, 1994, Fleming entered into a Build and Lease Agreement with Renaissance Plaza Associates for a building located at Renaissance Plaza in Atlantic City, New Jersey to be operated as a supermarket. (Compl. ¶ 9.) That same day, Fleming entered a Sublease Agreement

with Renco for those same premises at Renaissance Plaza. (Compl. ¶ 10.) The Sublease Agreement contained the minimum weekly rental fees for lease years one (1) through twenty (20). (Sublease Agreement, Ex. A to Pl's Resp. 5.)

On August 19, 1996, nearly two years after the Sublease Agreement was signed, Fleming loaned Renco $400,000 with no interest for the purchase of inventory. (Promissory Note, Ex. A to Def.'s Mot. 1; Pl.'s Resp. 5.) In return for the $400,000 loan, Renco gave Fleming a non-interest bearing promissory note in which Renco agreed to pay the amount in full by December 27, 1996. Id. On August 19, 1996, the same day the promissory note was executed, Friedland gave Fleming his personal guaranty for the $400,000 promissory note from Renco. (Guaranty, Ex. B to Def.'s Mot. 1.) This Guaranty is separate from and does not specifically reference the Sublease Agreement; it is directed to Fleming Companies, Inc.; the relevant portion states:

> You are hereby requested to extend credit to Renco Supermarket, L.P. (the "Borrower"), from time to time, and to induce you to extend such credit, in consideration thereof, and in consideration of the benefits to accrue to the undersigned therefrom, the undersigned, intending to be legally bound, hereby absolutely, unconditionally, jointly and severally guarantees to you the prompt payment and performance when due, and at all times thereafter, of *the Four Hundred Thousand Dollar ($400,000.00) Promissory Note dated August 19, 1996*, and all costs, attorney's fees and expenses which may be incurred by you by reason of the Borrower's default in the payment of such indebtedness or the default of the undersigned hereunder.
>
> This is an absolute and continuing guarantee of payment in any event and shall not terminate until you have been paid in full the total amount of the Indebtedness and the Borrower has performed all obligations now or hereafter owing to you.

(Guaranty, Ex. B to Def.'s Mot. 1) (emphasis added).

On December 24, 1996, Renco paid in full the $400,000 to Fleming Companies. (Ans. ¶ 16.)

More than four years later in January 2001, Renco violated its Sublease Agreement with Fleming when it began to fall behind in rent payments, which now total $657,078.94. (Compl. ¶¶ 14-15.) Plaintiff now seeks to recover amounts unpaid by Renco in violation of the Sublease Agreement from Defendant.

LEGAL STANDARD

The standard of review for a Rule 12(c) motion is similar to the standard invoked for consideration of a Rule 12(b)(6) motion. As with a Rule 12(b)(6) motion, this Court views the facts alleged in the pleadings and the inferences to be drawn from those facts in the light most favorable to the plaintiff. The motion is not granted unless the moving party has established that there is no material issue of fact to resolve, and that it is entitled to judgment in its favor as a matter of law. Mele v. Fed. Reserve Bank, 359 F.3d 251, 253 (3d Cir. 2004)(quoting Leamer v. Fauver, 288 F.3d 532, 535 (3d Cir. 2002)). Specifically, on a Rule 12(b)(6) motion, the court is required to accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom, and to view them in the light most favorable to the non-moving party. See Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 (3d Cir. 1994).

The question is whether the plaintiff can prove any set of facts consistent with its allegations that will entitle it to relief, not whether it will ultimately prevail. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). While a court will accept well-pleaded allegations as true for the purposes of the motion, it will not accept legal or unsupported conclusions, unwarranted inferences, or sweeping legal conclusions cast in the form of factual allegations. See Miree v. DeKalb County, Ga., 433 U.S. 25, 27 (1977); Wash. Legal Found. v. Mass. Bar Found., 993 F.2d 962, 971 (1st Cir. 1993). Moreover, the claimant must set forth sufficient information to outline the elements of its claims or

to permit inferences to be drawn that these elements exist. See Fed. R. Civ. P. 8(a)(2); Conley v. Gibson, 355 U.S. 41, 45-46 (1957)(quoting Sadruddin v. City of Newark, 34 F. Supp. 2d 923, 925 (D.N.J.1999).

DISCUSSION

Plaintiff alleges that the outstanding rent is an obligation owed by Defendant pursuant to the Guaranty. (Compl. ¶ 16.) Defendant maintains that the Guaranty only covers the $400,000 promissory note. (Ans. ¶¶ 19-21.) Therefore, when the note was paid in December 1996, the Defendant personally had no other obligation to Fleming. Id. The Court agrees.

First, the Guaranty specifies that it "shall be governed by, and construed according to, the internal laws of the state of New Jersey." (Guaranty, Ex. B to Def.'s Mot. 3.) Under New Jersey law, guaranty agreements must be strictly construed, and a guarantor cannot be held liable beyond the strict terms of the guaranty. Nat'l Westminster Bank N.J. v. Lomker, 649 A.2d 1328, 1332 (N.J. Super Ct. App. Div. 1994), cert. denied, 142 N.J. 454 (1995); Housatonic Bank & Trust Co. v. Fleming, 560 A.2d 97, 99 (N.J. Super Ct. App. Div. 1989). Also, guarantees are to be interpreted against the entity that prepared the form. Center 48 Ltd Partnership v. May Dept. Stores Co., 810 A.2d 610, 619 (N.J. Super Ct. App. Div. 2002); First Bank & Trust Co. v. Siegel, 115 A.2d 152, 153 (N.J. Super Ct. Law Div. 1955).

Furthermore, the guaranty is a contract, and the primary concern is to interpret the agreement "according to its clear terms so as to effect the objective expectations of the parties." Center 48, 810 A.2d at 619 (citing Housatonic, 234 A.2d at 99); First Bank & Trust, 115 A.2d at 153. Accordingly, "an agreement guaranteeing the particular debt of another does not extend to any other indebtedness

not within the intention of the parties." Center 48, 810 A.2d at 619 (citing Garfield Trust v. Teichman, 95 A.2d 18, 22 (N.J. Super Ct. App. Div. 1953)). Nor can an obligation be extended by implication. Housatonic, 234 A.2d at 99. Further, any ambiguity that exists is to be resolved in favor of the guarantor. Center 48, 810 A.2d at 619. Finally, the terms of the guaranty are to be read "in light of commercial reality and in accordance with the reasonable expectations of persons in the business community involved in transactions of the type involved." Id. (citing Mt. Holly State Bank v. Mt. Holly Washington Hotel, Inc., 532 A.2d 1125, 1128 (N.J. Super Ct. App. Div. 1987).

New Jersey courts clearly have stated that the guarantor is not liable for anything beyond the strict terms of the guaranty. Nat'l Westminster Bank, 649 A.2d at 1332; Housatonic, 234 A.2d at 99. Therefore, the Court must first consider the strict terms of the Guaranty to determine if there is any ambiguity that would warrant further analysis. Here, the terms of the Guaranty specifically state that the Defendant guaranteed the $400,000 Promissory Note from Renco to Fleming dated August 19, 1996. (Guaranty, Ex. B to Def.'s Mot. 1.) The Guaranty contains no reference to the Sublease Agreement between Renco and Fleming or to rental payments. Also, the Guaranty and the Promissory Note were both executed on August 19, 1996, which suggests their relatedness. The Sublease, which was signed two years before the Promissory Note and the Guaranty, again is not referenced by the Guaranty.

Further, the Guaranty states that it terminates when the borrower has repaid the total debt in full, and performed all obligations owed under the Guaranty. Id. The record reflects that the Promissory Note became due on December 27, 1996 and that Renco paid the Note in full on December 24, 1996; Plaintiff does not dispute these facts. Furthermore, Plaintiff has not offered anything for this Court's consideration that could support Plaintiff's conclusion that the Guaranty

extends blindly to performance under the Sublease. If the rental payments were within the intention of the parties, the Guaranty should have specifically stated so by simply including the word "rent."[1]

As such, this Guaranty is limited to the $400,000 Promissory Note and cannot be extended to any other indebtedness not clearly within the intention of the parties. See Center 48, 810 A.2d at 619. Although Plaintiff suggests that the commercial realities in this case were such that the parties were involved in a long term business relationship involving a sublease, a supply agreement between Fleming and Renco, and a large loan to purchase inventory (Pl.'s Resp. 5), Friedland's apparent involvement in those transactions is limited by the pleadings to his guarantee of the loan to purchase inventory. Even assuming Plaintiff's claim to be viable, New Jersey law prevents a further presumption that the rental payments, which were a part of that broader business relationship but were never identified in the Guaranty, can now be construed as an implied obligation covered by the Guaranty.

CONCLUSION

This case does not involve an ambiguous guaranty. The terms are clear that Defendant's only obligation to Fleming was the guaranty of Renco's $400,000 promissory note. Once that note was repaid, the Defendant's obligation to Fleming terminated. Even if one were to find any ambiguity, New Jersey law requires that it be resolved in the guarantor's favor, which would result in the same

[1]Plaintiff's suggestion that the language "now or hereafter owing to you" indicates the intention to guarantee all the obligations of the Sublease (Pl.'s Resp. 5) is inconsistent with New Jersey law. Although that language can create a continuing obligation, a Guaranty must specifically state what the actual obligation is. See Mt. Holly, 532 A.2d at 1128. In this instance, the only stated obligation owing to Defendant was the $400,000 Promissory Note. If the parties had intended the Guaranty to go beyond the transaction involving the $400,000 Promissory Note, they should have stated as much. See First Bank & Trust, 115 A.2d at 153 (enforcing a guaranty agreement that "unconditionally guaranteed to the plaintiff the payment at maturity or whenever by the terms of *any* note, contract, etc.") (emphasis added).

conclusion. Therefore, the Court will grant Defendant's Motion for Judgment on the Pleadings. An appropriate order follows.

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THE POST CONFIRMATION TRUST	:	
FOR FLEMING COMPANIES, INC.	:	
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	:	CIVIL ACTION NO. 06-CV-1118
v.	:	
	:	
HAROLD FRIEDLAND	:	
Defendant.	:	

ORDER

AND NOW, this _____ day of September, 2006, upon consideration of Defendant's Motion for Judgment on the Pleadings (Doc. 8) and Plaintiff's Response in Opposition (Doc. 9), IT IS ORDERED and DECREED that Defendant's Motion is GRANTED. JUDGMENT IS HEREBY ENTERED in favor of Defendant and against Plaintiff.

IT IS FURTHER ORDERED that Defendant's Motion for Leave to File a Reply in Further Support of Motion for Judgment on the Pleadings (Doc. 10), and Plaintiff's Motion for Leave to File a Sur-reply in Opposition to Defendant's Motion for Judgment on the Pleadings (Doc. 11) are

DENIED.

IT IS FURTHER ORDERED that the Clerk of the Court shall mark the above-captioned case as CLOSED.

BY THE COURT:

Hon. Petrese B. Tucker, U.S.D.J.